

E-017/M-93-675 ORDER AUTHORIZING CERTIFICATION OF OTTER TAIL POWER'S
APPLICATION FOR ALLOWANCES FROM THE CONSERVATION AND RENEWABLE
ENERGY RESERVE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request of Otter Tail
Power Company for Commission Certification
of Eligibility for Renewable Energy
Allowances

ISSUE DATE: April 22, 1994

DOCKET NO. E-017/M-93-675

ORDER AUTHORIZING CERTIFICATION
OF OTTER TAIL POWER'S APPLICATION
FOR ALLOWANCES FROM THE
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PROCEDURAL HISTORY

On May 17, 1993, Otter Tail Power Company (OTP) applied to the Commission for certification that it was subject to the Commission's least cost planning process, and that the process meets the requirements of certain rules of the federal Environmental Protection Agency (EPA), 40 CFR 78.82 (a) (4) (i-vi). The matter was assigned to the current docket.

On May 19, 1993, the Commission issued its ORDER APPROVING 1992 RESOURCE PLAN AND REQUIRING ADDITIONS TO 1994 RESOURCE PLAN in Docket No. E-017/RP-92-484.

On July 23, 1993, the Commission issued an order in generic Docket No. E-999/CI-91-923 finding that its resource planning process (Minn. Rules, Chapter 7843) is a "least cost planning process" as that term is used in 40 CFR 78.82 (a) (4) (i-v) and that it meets the requirements for such a process set forth in paragraphs (i) through (v) of that section. The Order stated that the Commission would proceed to review specific requests by utilities for certification of eligibility for allowances.

On September 24, 1993, the Commission issued its ORDER REQUIRING FURTHER FILINGS in this docket. The Commission found that it did not have sufficient data to determine whether the Company was implementing the resource plan to the maximum extent practicable. Therefore, the Commission deferred action on the Company's request until more information was made available. Specifically, the Commission required the Company to file the following:

- (a) the report on wind generation required under the May 19, 1994 Order in Docket No. E-017/RP-92-484;
- (b) a progress report on the dialogue with stakeholders required under the May 19 Order;
- (c) a detailed description of Company efforts, both undertaken and planned, to comply with the May 19 Order;
- (d) an affidavit by a Company official stating the Company is complying, and intends to fully comply, with the requirements of the May 19 Order, including those applicable to the 1994 resource plan;

- (e) any other information the Company considers relevant.

On November 23, 1993, Otter Tail filed information responding to the September 24, 1993 Order and requested the Commission to again take up the Company's certification request.

On April 14, 1994, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. OTP IS IMPLEMENTING A QUALIFIED LEAST COST PLANNING PROCESS TO THE MAXIMUM EXTENT PRACTICABLE

The Commission's ability to make this certification is based upon two separate findings. First, that Otter Tail is subject to a qualified least cost planning process and second, that it is implementing that process to the maximum extent practicable.

A. Otter Tail is Subject to a Qualified Least Cost Planning Process as Required by Paragraphs (a)(4)(i) through (v) of 40 CFR 73.82

In generic Docket No. E-999/CI-91-923, the Commission found that Minnesota's major investor-owned electric utilities, including Otter Tail, are subject to a least cost planning process that meets the requirements of paragraphs (a)(4)(i) through (v) of 40 CFR 73.82. The Commission's generic finding is applicable to Otter Tail in the current docket.

B. Otter Tail is Implementing That Process to the Maximum Extent Practicable as Required by Paragraph (vi) of 40 CFR 73.82 (a)(4)

Otter Tail may meet the requirement of paragraph (vi) of 40 CFR 73.82(a)(4) by implementing to the "maximum extent possible" either 1) a least cost plan **or** 2) a least cost planning process.¹

To clarify the inquiry at hand, the Commission will begin by considering whether Otter Tail is implementing the least cost planning process to the maximum extent possible.

Parties in the generic docket advanced several possible interpretations and varying standards that could apply to making the "maximum extent practicable" determination. However, as found when the Commission previously considered this question², the Commission is inclined to tailor

¹ See In the Matter of an Investigation into the Effects of the Clean Air Act Amendments on Minnesota Electric Utilities, Docket No. E-999/ CI-91-923, ORDER FINDING THAT MINNESOTA'S RESOURCE PLANNING PROCESS MEETS CERTAIN FEDERAL REQUIREMENTS (July 23, 1993). In that case, the Izaak Walton League of America (IWLA) argued that 40 CFR 73.82(a)(4)(vi) requires that the Commission find that the utility is implementing either the five standards cited previously, or some other definition of "ideal" least cost planning, to the maximum extent possible. The Commission found that the IWLA's interpretation was incorrect. The Commission stated that a plain reading of the regulation's language shows that the thing which the Commission must find is being implemented to the maximum extent possible is the "least cost plan or a least cost planning process." Order at page 6.

² In the Matter of the Request of Minnesota Power for Commission Certification of Eligibility for Renewable Energy Allowances From the Energy Conservation and Renewable Reserve Under 40 CFR 73.82, Docket No. E-015/M-93-676, ORDER AUTHORIZING

the determination process (i.e. the process it will require to make that determination) in light of 1) the number and severity of the deficiencies it noted when it approved the company's resource plan and 2) the sources available to verify the company's compliance.

Taking these two considerations into account, the Commission finds that the information filed to date is sufficient without further filing, comment or hearing to determine that Otter Tail is making satisfactory progress in implementing the directives of the Commission's May 19, 1993 Order accepting the Company's resource plan.

In so finding, the Commission notes that Otter Tail has

1. filed the required wind generation report (September 15, 1993);
2. filed progress reports on the dialogue with stakeholders (October 13, 1993 and February 14, 1994);
3. initiated a demand-side management (DSM) potential study for its service area;
4. initiated a comprehensive study of renewables;
5. completed the analysis on several alternatives for meeting any near-term summer capacity deficit and indicated that it intends to detail the results in its 1994 resource plan; and

6. filed a Certificate of Intent to Comply which states that the Company was complying and intends to fully comply with the requirements of the Commission's May 19, 1993 Order in Docket No. E-017/RP-92-484.

Based on 1) the fact that Otter Tail has already obtained approval of its resource plan and 2) the finding made above that the Company is making satisfactory progress in implementing the directives of the Commission's May 19, 1993 Order, the Commission concludes that Otter Tail is implementing a Commission-approved least cost planning process to the maximum extent practicable.³

II. ADDITIONAL CERTIFICATIONS NOT REQUIRED IN THIS CASE

If in its application to the EPA, Otter Tail had claimed savings for a conservation or renewable energy measure not listed in Appendix A of 40 CFR Part 73, the Commission would have to determine whether the measures met the criteria of 40 CFR 73.81 (a) (2). Since the Company's renewable energy project (energy production using biomass) does appear in Appendix A, the Commission need not make this additional finding.

Likewise, if the Company had proposed conservation measures and claimed that these measures resulted in a certain level of energy savings that had been verified at the state level by the Commission using a verification methodology, other certifications would be required. Specifically, the Commission would be required to certify that the verification procedures met the Commission's requirements and that the information and calculations contained in the Company's application were correct and accurate. Certification of these elements are not required in this case, however, because OTP is basing its request for allowances on a renewable energy project, not conservation.

III. COMMISSION ACTION

The Commission has carefully reviewed the requirements which the Commission is asked to certify under the CAAA rules. In accord with the preceding analysis and findings, therefore, the Commission is prepared to certify Otter Tail's proposal to the EPA, as required by those rules.

Specifically, the Commission will authorize the Executive Secretary to sign the Company's EPA Form 7610-10(1-93), indicating on behalf of the Commission that 1) Otter Tail is subject to a least cost planning process that meets the established criteria and 2) that the utility is implementing a Commission-approved least cost planning process to the maximum extent practicable.

ORDER

1. The Commission's Executive Secretary is hereby authorized and directed to certify, on behalf of the Commission, the relevant items listed in Step 12 of EPA Form 7610-10 (1-93) and take such other steps to communicate with the EPA consistent with this Order.
2. This Order shall become effective immediately.

³ In light of the conclusion that OTP is implementing the least cost planning process to the maximum extent practicable, the Commission need not move on to analyze whether the Company is implementing the Commission-approved least cost plan to the maximum extent practicable. 40 CFR 73.82(a)(4).

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)